IN THE HIGH COURT OF JUDICATURE AT B0MBAY
APPELLATE SIDE
WRIT PETITION NO.2039 OF 2007

Sarjerao Tukaram Kakade ... ... Petitioner
v/s.
State of Maharashtra & ors. ... ... Respondents

Mr.N.V. Bandiwadekar for petitioner.

CORAM : SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.

DATED : 7th December 2007

P.C.: (Per Roshan Dalvi, J.)

1. The challenge in this petition is to the order of the Maharashtra Administrative Tribunal (MAT) dated 17.10.2006 in Original Application No.233 of 2001. The petitioner served as a Police Constable. He was, therefore, in uniformed service. The petition shows that he was removed from service upon the misconduct alleged by the respondents consequent upon his absenteeism for a period of 498 days in 12 different spells ranging from 3 days to 135 days.

2. The petitioner was issued a notice. A departmental enquiry was held. The enquiry report was served upon him. He was

directed to show cause. He denied that he committed misconduct and thereafter he was removed from the service.

3. It is denied that he was absent for the aforestated period. It is only contended that he was on leave and he had produced the medical certificate.

4.It is contended on behalf of the petitioner that the order of removal from service is shocking and disproportionate to the alleged misconduct, pursuant to which he has challenged the order on the enquiry report, which came to be confirmed upon dismissal of the original application.

5.We may mention that the petitioner, in this case, has not been dismissed only on the ground of absenteeism. Though that fact has not been stated in the writ petition, he was also found to be drunk on duty. He was on security duty at Raj Bhavan and Sahar Airport. He was medically examined. The medical examination was conducted on 23.9.1995. A photo copy of the Medical Officer's certificate was produced in the enquiry as well as before the learned MAT whilst considering the application under the impugned order.

6. The petitioner has been found to have committed misconduct on the twin charge of long absenteeism and drunkenness on public duty.

7. The learned MAT has considered the facts and applied them in view of the precedents relating to long absence. In an enquiry proceeding by a Disciplinary Authority re-appreciation of evidence is not permitted as in appeal. An order of the Tribunal or the High Court cannot substitute the order of the Disciplinary Authority unless it is shocking to the conscience of the court as wholly disproportionate to the misconduct.

8. Though the petitioner has been removed from service on the aforesaid twin grounds, we have been shown various judgments of the Apex Court, which have considered only the ground of long absenteeism.

9. Even that alone has not weighed with the Apex Court in taking a lenient view, specially against a public servant in uniformed service.

10. In the case of ***Union of India & ors. Vs. Datta Linga Toshatwad*** **(2005) 13 SCC 709**, it has been held absenteeism amounts to desertion. Members of unformed services cannot absent themselves on frivolous pleas and overstay the leave even by a few days without satisfactory explanation. In that case, the absenteeism was from

16.6.1997 until filing of the writ petition in 1998. In the departmental enquiry, the employee, who was serving in the Central Reserve Police Force, was dismissed. The order of reinstatement granted by the High Court without back wages was set aside by the Apex Court, as dismissal was considered not grossly disproportionate to the misconduct alleged.

11. In the case of ***State of Rajasthan & anr. vs. Mohd. Ayub Naz*** **(2006) 1 SCC 589**, it was held on the principle of "no work no pay", an employee, who was held liable for misconduct on the ground of absenteeism, would not be entitled to have the order of the Administrative Authority substituted. Applying the principles in the case of ***Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation*** **(1948) 1KB 223**, it was held that the Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings. In that case, it was held that punishment of removal imposed upon the employee for willful absence for 3 years was absolutely correct and not disproportionate to the misconduct.

12. In the case of ***North-Eastern Karnataka RT Corporation vs. Ashappa*** **(2006) 5 SCC 137**, the employee, who was a

conductor in Municipal Corporation and who remained absent for about 4 years unauthorisedly, was held liable to be dismissed. It was held that remaining absent for a long time is not a minor misconduct. A Corporation, which provides public utility services of running buses, cannot allow the employee to remain absent for a long time. The court, therefore, would not interfere with the order passed in the departmental enquiry upon such misconduct.

13. In this case, long absenteeism is coupled with the drunkenness on duty. The conduct is unforgivable. The order of the MAT is reasoned and correct. Consequently, the petition is dismissed.

[SMT.RANJANA DESAI, J.]

[SMT.ROSHAN DALVI, J.]